

AMENDED IN ASSEMBLY JUNE 16, 2005

AMENDED IN SENATE MAY 12, 2005

AMENDED IN SENATE MARCH 31, 2005

SENATE BILL

No. 320

Introduced by Senator Machado

February 16, 2005

An act to amend Section 999.9 of the Military and Veterans Code, and to amend Section 10115.2 of the Public Contract Code, relating to veterans.

LEGISLATIVE COUNSEL'S DIGEST

SB 320, as amended, Machado. Disabled veteran business enterprises: certification.

Existing law requires state departments that award specified types of contracts to establish a 3% participation goal for certified disabled veteran business enterprises, as defined. With regard to disabled veteran business enterprises, existing law makes it a crime to, among other things, willfully make false statements or to fraudulently obtain certification as a disabled veteran business enterprise, as specified. Existing law requires the Department of General Services to revoke the certification as a disabled veteran business enterprise from any business that has committed any of these crimes regarding certification as a disabled veteran business enterprise.

This bill would preclude a business enterprise and its owners, partners, and principals, from applying for certification as a disabled veteran business enterprise for 3 years if that business enterprise has either been denied certification as a disabled veteran business enterprise, has had a certification as a disabled veteran business enterprise revoked, or has failed to answer an official inquiry by the

agency that certifies businesses as disabled veteran business enterprises within 60 days of that inquiry being sent, as specified.

Existing law requires any state agency, department, officer, or other state governmental entity awarding certain contracts pursuant to competitive bidding procedures to consider the efforts of a bidder to meet disabled veteran business enterprise goals and to award contracts to the lowest responsible bidder meeting those goals.

This bill would establish specified procedures for bidders and awarding departments to follow to ensure compliance with existing law. The bill would permit awarding departments to retain 5% from each payment due under the contract to ensure compliance with the participation goals. The bill would provide for the payment of the retention funds to the contractor when the contractor complies with the 3% goal and would require contractors who fail to meet the 3% goal to forfeit the retention, minus an amount equal to the total dollar value of actual disabled veteran business enterprise participation under the contract. The bill would require awarding departments to return forfeited retention moneys to the General Fund.

By requiring bidders to submit statements of compliance signed under penalty of perjury, the bill would create a new crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 999.9 of the Military and Veterans
- 2 Code is amended to read:
- 3 999.9. (a) It is unlawful for a person to:
- 4 (1) Knowingly and with intent to defraud, fraudulently obtain,
- 5 retain, attempt to obtain or retain, or aid another in fraudulently
- 6 obtaining or retaining or attempting to obtain or retain,
- 7 certification as a disabled veteran business enterprise for the
- 8 purpose of this article.

1 (2) Willfully and knowingly make a false statement with the
2 intent to defraud, whether by affidavit, report, or other
3 representation, to a state official or employee for the purpose of
4 influencing the certification or denial of certification of any
5 entity as a disabled veteran business enterprise.

6 (3) Willfully and knowingly obstruct, impede, or attempt to
7 obstruct or impede, any state official or employee who is
8 investigating the qualifications of a business entity that has
9 requested certification as a disabled veteran business enterprise.

10 (4) Knowingly and with intent to defraud, fraudulently obtain,
11 attempt to obtain, or aid another person in fraudulently obtaining
12 or attempting to obtain, public moneys, contracts, or funds
13 expended under a contract, that are awarded by any state agency,
14 department, officer, or other state governmental agency, to which
15 the person is not entitled under this article.

16 (5) Knowingly and with intent to defraud, fraudulently
17 represent participation of a disabled veteran business enterprise
18 in order to obtain or retain a bid preference or a state contract.

19 (6) Willfully and knowingly make or subscribe to any
20 statement, declaration, or other document that is fraudulent or
21 false as to any material matter, whether or not that falsity or fraud
22 is committed with the knowledge or consent of the person
23 authorized or required to present the declaration, statement, or
24 document.

25 (7) Willfully and knowingly aid or assist in, or procure,
26 counsel, or advise, the preparation or presentation of a
27 declaration, statement, or other document that is fraudulent or
28 false as to any material matter, regardless of whether that falsity
29 or fraud is committed with the knowledge or consent of the
30 person authorized or required to present the declaration,
31 statement, or document.

32 (8) Willfully and knowingly fail to file any declaration or
33 notice with the awarding agency that is required by Section
34 999.2.

35 (9) Establish, or knowingly aid in the establishment of, or
36 exercise control over, a firm found to have violated any of
37 paragraphs (1) to (8), inclusive.

38 (b) Any person who violates any of the provisions of
39 subdivision (a) shall be guilty of a misdemeanor punishable by
40 imprisonment in the county jail not exceeding six months or by a

1 fine not exceeding one thousand dollars (\$1,000), or by both. In
2 addition, the person shall be liable for a civil penalty of not less
3 than ten thousand dollars (\$10,000) nor more than thirty
4 thousand dollars (\$30,000) for the first violation, and a civil
5 penalty of not less than thirty thousand dollars (\$30,000) nor
6 more than fifty thousand dollars (\$50,000) for each additional or
7 subsequent violation. A defendant who violates any of the
8 provisions of subdivision (a) shall pay all costs and attorney's
9 fees incurred by the plaintiff in a civil action brought pursuant to
10 this section.

11 (c) (1) The Department of General Services shall suspend any
12 person who violates subdivision (a) from bidding on, or
13 participating as either a contractor, subcontractor, or supplier in,
14 any state contract or project for a period of not less than three
15 years, and if certified as a disabled veteran business enterprise,
16 the department shall revoke the business' certification for a
17 period of not less than three years. An additional or subsequent
18 violation shall extend the periods of suspension and revocation
19 for a period of not less than five years. The suspension and
20 revocation shall apply to the principals of the business and any
21 subsequent business formed or financed by, or affiliated with,
22 those principals.

23 (2) The Department of General Services shall prohibit any
24 business or person who fails to satisfy the penalties, costs, and
25 attorney's fees imposed pursuant to subdivision (b) from further
26 contracting with the state until the penalties are satisfied.

27 (d) The awarding department shall report all alleged violations
28 of this section to the Department of General Services. The
29 Department of General Services shall subsequently report all
30 alleged violations to the Attorney General who shall determine
31 whether to bring a civil action against any person or firm for
32 violation of this section.

33 (e) The Department of General Services shall monitor the
34 status of all reported violations and shall maintain and make
35 available to all state departments a central listing of all firms and
36 persons who have been determined to have committed violations
37 resulting in suspension.

38 (f) An awarding department shall not enter into any contract
39 with any person suspended for violating this section during the
40 period of the person's suspension. An awarding department shall

1 not award a contract to any contractor utilizing the services of
2 any person as a subcontractor suspended for violating this section
3 during the period of the person's suspension.

4 (g) The awarding department shall check the central listing
5 provided by the Department of General Services to verify that the
6 person or contractor to whom the contract is being awarded, or
7 any person being utilized as a subcontractor or supplier by that
8 person or contractor, is not under suspension for violating this
9 section.

10 (h) Notwithstanding any other provision of law, a business
11 enterprise and its owners, partners, and principals, that have
12 either been denied certification as a disabled veteran business
13 enterprise, have had a certification as a disabled veteran business
14 enterprise revoked, or have failed to answer an official inquiry by
15 the agency that certifies businesses as disabled veteran business
16 enterprises within 60 days of that inquiry being sent, is precluded
17 from making any subsequent application for certification as a
18 disabled veteran business enterprise for a period of three years
19 from the date of the denial, the revocation, or the expiration of
20 the 60-day period.

21 SEC. 2. Section 10115.2 of the Public Contract Code is
22 amended to read:

23 10115.2. (a) In awarding contracts to the lowest responsible
24 bidder, the awarding department shall consider the efforts of a
25 bidder to meet the 3-percent minimum participation goal for
26 disabled veteran business enterprises set forth in this article,
27 Section 17076.11 of the Education Code, and Section 999.1 of
28 the Military and Veterans Code. The awarding department shall
29 award the contract to the lowest responsible bidder meeting the
30 requirements set forth in this section.

31 (1) Each bidder shall submit, with his or her bid, a statement
32 of compliance certifying the percentage of disabled veteran
33 business enterprise participation under the contract. The
34 statement of compliance shall be verified under penalty of
35 perjury and shall list the name, address, and dollar value of the
36 contract to be performed by each disabled veteran business
37 enterprise under the contract. A bidder shall be deemed to be
38 nonresponsive for failure to submit the statement of compliance.

39 (2) To ensure compliance with the 3-percent disabled veteran
40 business enterprise participation goal, the awarding department

1 shall hold as retention an amount equal to 5 percent of each and
2 every payment under the contract. This retention shall be in
3 addition to any other retention held by the awarding department
4 under the contract.

5 ~~(b) If no bidder has met the 3-percent participation goal, the~~
6 ~~awarding department may award the contract to the lowest~~
7 ~~responsible bidder, subject to the following conditions:~~

8 *(b) If the lowest responsible bidder has not met the 3-percent*
9 *minimum disabled veteran business enterprise participation goal,*
10 *the contract shall be awarded to the lowest responsible bidder,*
11 *subject to the following conditions:*

12 (1) The contractor shall diligently pursue disabled veteran
13 business enterprise participation during the course of the
14 contract, including advertising in trade papers and papers
15 focusing on disabled veteran business enterprises.

16 ~~(2) Prior to any payment under the contract, the contractor~~
17 ~~shall submit a statement of compliance, verified under penalty of~~
18 ~~perjury, certifying all outreach efforts and the total dollar value~~
19 ~~of all actual participation by disabled veteran business enterprise~~
20 ~~subcontractors and suppliers under the contract. When~~
21 ~~calculating the total dollar value of participation, a contractor~~
22 ~~may include the cost of advertising in a trade or focus paper that~~
23 ~~is owned and published by a disabled veteran business enterprise.~~

24 *(2) As part of the statement of compliance required by*
25 *paragraph (1) of subdivision (d), the contractor shall submit a*
26 *description of all outreach efforts performed pursuant to*
27 *paragraph (1).*

28 (c) (1) In the event of a precise tie between the lowest
29 responsible bid of a bidder meeting the specifications of a
30 disabled veteran business enterprise and the lowest responsible
31 bid of a bidder meeting the specifications of both disabled
32 veteran business enterprise and small business or microbusiness,
33 the contract shall be awarded to the disabled veteran business
34 enterprise small business or microbusiness.

35 (2) In the event of a precise tie between the lowest responsible
36 bid of a bidder meeting the specifications of a small business or
37 microbusiness and the lowest responsible bid of a bidder meeting
38 the specifications of a disabled veteran business enterprise, the
39 contract shall be awarded to the disabled veteran business
40 enterprise.

(3) In awarding noncompetitively bid contracts, a precise tie exists when contracts for goods or services are awarded at fixed rates established by the awarding department or by the Department of General Services.

(d) (1) Upon completion of the contract, and prior to any submission of invoice for final payment under the contract, the contractor shall submit a statement of compliance verified under penalty of perjury, to the awarding ~~department itemizing~~ *department. The statement of compliance shall itemize* the total dollar value of work performed by disabled veteran business enterprises under the contract. *When calculating the total dollar value of participation, a contractor may include the cost of advertising in a trade or focus paper that is owned and published by a disabled veteran business enterprise.*

(2) *Prior to final payment under the contract, the awarding department shall verify the total dollar value of work performed by disabled veteran business enterprises as reported by the contractor in the contractor's statement of compliance.*

~~(2)~~

(3) If the contractor has met the 3-percent disabled veteran business enterprise participation goal, the awarding department shall pay the contractor, concurrently with the final payment due under the contract, the 5-percent retention.

~~(3)~~

(4) If the contractor has failed to meet the 3-percent disabled veteran business enterprise participation goal, the contractor shall forfeit the 5-percent retention set forth in paragraph (2) of subdivision (a), minus an amount equal to the total dollar value of actual disabled veteran business enterprise participation under the contract.

(e) Forfeited retentions described in paragraph ~~(3)~~ (4) of subdivision (d) shall revert to the General Fund.

(f) The awarding department shall use the following method to calculate credit towards the 3-percent disabled veteran business enterprise goal for all ~~contracts for commodities, supplies, or contracts, subcontracts, and purchase orders for commodities, supplies, information technology, or construction materials~~ awarded to disabled veteran business enterprises:

(1) In awarding ~~contracts for commodities, supplies, or contracts, subcontracts, and purchase orders for commodities,~~

1 *supplies, information technology, or construction materials that*
2 *are manufactured by a disabled veteran business enterprise, a*
3 *credit equal to 100 percent of the total value of the commodities,*
4 *supplies, or materials provided by a disabled veteran business*
5 *enterprise under a contract shall be applied to the 3-percent goal.*

6 (2) ~~In awarding contracts for commodities, supplies, or~~
7 ~~contracts, subcontracts, and purchase orders for commodities,~~
8 ~~supplies, information technology, or construction materials that~~
9 ~~are not manufactured by a disabled veteran business enterprise,~~
10 ~~the allowable credit is limited to 100 percent of the disabled~~
11 ~~veteran business enterprise's markup. "Markup" means the~~
12 ~~difference between the disabled veteran business enterprise's~~
13 ~~acquisition cost and acquisition cost of a disabled veteran~~
14 ~~business enterprise meeting the definition of a commercially~~
15 ~~useful function, as specified in Section 999 of the Military and~~
16 ~~Veterans Code, and the price offered to the awarding department~~
17 ~~or prime contractor.~~

18 (3) Notwithstanding any other provision of law, in the event a
19 disabled veteran business enterprise *meeting the definition of a*
20 *commercially useful function, as specified in Section 999 of the*
21 *Military and Veterans Code*, acts as a factory representative or
22 agent by selling commodities, supplies, ~~or information~~
23 ~~technology, or construction materials for a fee or commission,~~
24 the allowable credit is limited to 100 percent of the amount of the
25 fee or commission paid to the disabled veteran business
26 enterprise.

27 ~~SEC. 3—~~

28 *SEC. 3.* No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the
33 penalty for a crime or infraction, within the meaning of Section
34 17556 of the Government Code, or changes the definition of a
35 crime within the meaning of Section 6 of Article XIII B of the
36 California Constitution.